

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
New York Stock Exchange, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporate Tax :
Procedure under Article 9A of the Tax Law for the :
Year 1975. :
_____:

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon New York Stock Exchange, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

New York Stock Exchange, Inc.
Attn: Mr. Robert Gaudiosi
11 Wall St.
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

September 28, 1983

New York Stock Exchange, Inc.
Attn: Mr. Robert Gaudiosi
11 Wall St.
New York, NY 10005

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
NEW YORK STOCK EXCHANGE, INC. : DECISION
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Corporations :
under Article 9-A of the Tax Law for the Year :
1975. :

Petitioner, New York Stock Exchange, Inc., 11 Wall Street, New York City, New York 10005, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1975 (File No. 27991).

In a letter dated October 20, 1982, petitioner, by its agent and attorney, Robert Gaudiosi, Esq., waived a formal hearing and consented to submission of this matter to the State Tax Commission. The following decision is rendered upon the file as presently constituted.

ISSUE

Whether petitioner filed a timely claim for refund of corporation franchise tax paid for the period ended December 31, 1975.

FINDINGS OF FACT

1. Petitioner, New York Stock Exchange, Inc., timely filed its New York State Corporation Franchise Tax Report for the period ended December 31, 1975 on June 15, 1976 after obtaining a three-month extension for filing such tax report from the original due date of March 15, 1976.

2. On June 20, 1979, the Audit Division received a Claim for Credit or Refund of Corporation Tax Paid from petitioner for the period ended December 31,

1975. Petitioner claimed a refund of \$269,918.00 "due to the Allocation of Investment Income out of New York State".

3. On August 20, 1979, the Audit Division received a Claim for Credit or Refund of Corporation Tax Paid, which petitioner designated as a "Corrected" claim, for the period ended December 31, 1975. Petitioner stated that the corrected "(c)laim is being filed in order to correct the apportionment of Investment Income to the published issuers' allocation percentages...". Petitioner also attached relevant schedules and documentation to support its corrected claim for refund.

4. On September 28, 1979, the Audit Division denied petitioner's claim for refund on the basis that a "(c)laim for credit or refund must be filed within three years from the time the report was filed. Your claim was not filed within such period...".

5. Petitioner is a national securities exchange incorporated under the laws of the State of New York.

6. On its original return for the period ended December 31, 1975, petitioner did not allocate its investment income between New York and elsewhere and showed a corporation franchise tax of \$1,287,488.00 for such period.

7. Henry J. Klaassens, petitioner's controller, signed the original claim for refund on behalf of petitioner on June 15, 1979.

8. There is no evidence of a postmark to show when petitioner mailed the claim for refund which was received by the Audit Division on June 20, 1979. Although the petitioner, in its petition herein, states that the "Claim for Refund, Form CT-8, and amended Form CT-3 for 1975 were mailed on Friday, June 15, 1979 to the Albany office of the Corporation Tax Bureau", it has

failed to produce any proof of mailing by registered or certified mail to support such allegation.

CONCLUSIONS OF LAW

A. That Tax Law §1087(a) provides, in part, as follows:

"Claim for credit or refund of an overpayment of tax under article...nine-a...shall be filed by the taxpayer within three years from the time the return was filed..."

Therefore, a timely claim for refund herein should have been filed by June 15, 1979.

B. That Tax Law §1087(e) provides, in part, as follows:

"Failure to file claim within prescribed period. -- No credit or refund shall be allowed or made...after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period."

C. That Tax Law §1091(a) provides, in part, as follows:

"Timely mailing. -- If any return, declaration of estimated tax, claim...required to be filed...within a prescribed period or on or before a prescribed date under authority of any provision of this article (twenty-seven), or of article...nine-a...is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed...the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subsection shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document...and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed."

D. That pursuant to Tax Law §1089(e), petitioner has failed to sustain its burden of proof to show that its claim for refund was timely filed. There is nothing in the record showing that the date of the United States postmark stamped on the cover in which the claim for refund was mailed was on or before

June 15, 1979. Proof of mailing by registered or certified mail was not shown.

See Deutsch v. C.I.R., 599 F.2d 44 (2d Cir.), cert. denied, 444 U.S. 1015.

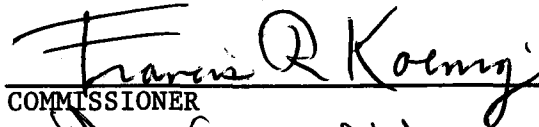
E. That the petition of the New York Stock Exchange, Inc. is in all respects denied.

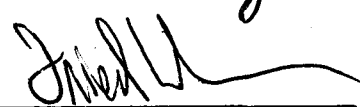
DATED: Albany, New York

SEP 28 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

 
COMMISSIONER